

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

*Filed*  
**RECEIVED**  
HARRISBURG, PA

JAN 16 2013

MARY E. D'ANDREA, CLERK  
Per                     

Francisco Barrios,

Petitioner

vs.

United States of America,

Respondent

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Civil Action#: \_\_\_\_\_

Related Criminal Matter

1:08-cr-218-04

**MOTION TO VACATE, CORRECT OR SET ASIDE A SENTENCE BY A**

**PERSON IN FEDERAL CUSTODY PURSUANT TO 28 U.S.C. § 2255**

COMES NOW, Francisco Barrios, Petitioner and does MOVE this Honorable Court to enter it's Judgement and Order to vacate his sentence on the basis of egregious Sixth Amendment violations due to ineffectiveness of counsel and prosecutorial misconduct.

- 1.) Francisco Barrios did not knowingly create, possess, distribute or conspire to distribute methamphetamine or any other controlled substance analogue. His conviction should be vacated pursuant to the decisions of United States v. Hodge, 321 F.3d 429 (2003) and under Strickland v. Washington, 466 U.S. 668.
- 2.) The purported methamphetamine did not contain a "detectable amount" of methamphetamine as required by 21 U.S.C. § 841(a) and Barrios conviction should be set aside per United States v. Gori, 324 F.3d 234 (2003).
- 3.) Francisco Barrios suffered a Sixth Amendment violation when his counsel failed to investigate leads, to call expert witnesses or to move for severance, and such actions prejudiced his substantial liberty interest.
- 4.) Francisco Barrios was prejudiced and the trial was tainted due to the perjured testimony of the governments star witness Anthony Pagan. The prosecutor failed to correct the record in violation of Napue v. Illinois, 360 U.S. 264, Giglio v. United States, 405 U.S. 150 and Brady v. Maryland, 373 U.S. 83 (1963.) Accordingly, this Court must vacate Barrios conviction.

- 5.) Barrios' trial was further "tainted" by improper admittance of a non-testifying codefendants statement in violation Bruton v. United States, 391 U.S. 123. As the proverbial bell was "rang", it cannot be "unrang" and Barrios conviction must be set aside to prevent manifest injustice.
- 6.) Francisco Barrios would have accepted a like plea in relation to his brothers plea had counsel not advised him to proceed to trial because he could not be convicted for fake methamphetamine. Subsequently, Barrios has suffered from incompetent advice and relief is available per Lafler v. Cooper, 566 US \_\_\_\_ 2012 and Missouri v. Frye, 566 US \_\_\_\_ 2012.

WHEREAS AND FOR GOOD CAUSE, Fransico Barrios PRAYS that this Court, upon consideration of this Motion and its accompanying Brief vacate his sentence or in the alternative order an evidentiary hearing to further develop the facts or any other relief that this Court may deem necessary.

Dated this the 6th day of January, 2013.

Francisco Barrios

Francisco Barrios, Petitioner  
Registration # 16087-067  
FCI-ELKTON  
P.O. Box 10  
Lisbon, Ohio 44432

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MARY E. D'ANDREA, CLERK  
Per *[Signature]*

Francisco Barrios,

Petitioner

vs.

United States of America,

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**MOTION TO PROCEED IN FORMA PAUPERIS**

COMES NOW, Francisco Barrios and MOVES this Honorable Court to grant his Motion to proceed in forma pauperis as he is truly indigent.

- 1.) The petitioner does not own any real property.
- 2.) The petitioner makes less than \$600.00 dollars per year through the prison industries.

WHEREAS AND FOR GOOD CAUSE, Francisco Barrios PRAYS that this Court grant this Motion to proceed in forma pauperis along with any other relief that may be appropriate.

Dated this the 6th day of January, 2013.

*Francisco Barrios*  
Francisco Barrios, Petitioner  
Registration # 16087-067  
FCI-ELKTON  
P.O. Box 10  
Lisbon, Ohio 44432

NAME: Francisco Barrios  
REG.# 16087-067  
Federal Correctional Institution Elkton  
P. O. Box 10  
Lisbon, OH 44432

LEGAL MAIL

FILED  
HARRISBURG, PA

JAN 16 2013

MARY E. D'ANDREA, CLERK  
Per [Signature] Deputy Clerk



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⇌ 16087-067 ⇌

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Harrisburg, PA 17108-9998  
United States

USPS TRACKING NUMBER



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